

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

APPOQUINIMINK EDUCATION ASSOCIATION,	:	
DSEA/NEA,	:	
	:	<u>ULP 98-09-243</u>
Petitioner,	:	
	:	
and	:	
	:	
APPOQUINIMINK BOARD OF EDUCATION,	:	
Respondent	:	

DECISION ON REQUEST FOR TEMPORARY AND INJUNCTIVE RELIEF

BACKGROUND

The Appoquinimink Education Association, DSEA/NEA ("Petitioner"), is an employee organization within the meaning of Section 4002(h) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 ("Act") and the exclusive bargaining representative of the certificated, nonadministrative employees of the Appoquinimink School District, not including substitutes, supervisory or staff personnel of the District, within §4002(i), of the Act. The Appoquinimink School District/Board of Education ("District") is a public school employer within the meaning of 14 Del.C. §4002(n).

On September 28, 1998, Petitioner filed an unfair labor practice charge alleging conduct by the District in violation of §§4007(a)(1), (2), and (5) of the Act. The Charge alleges three (3) separate acts of misconduct: (1) The District's decision on June 2, 1998, to unilaterally impose its last, best contract offer after rejecting the Fact-Finder's recommended settlement; (2) A letter from the District Superintendent to

all bargaining unit employees setting forth the District's reasons for unilaterally implementing its last offer; and (3), An E-mail from the District Superintendent to a member of the Association's bargaining committee concerning a notice she distributed among the bargaining unit members prior to the ratification meeting.

The Charge also contains a request for preliminary relief in the form of an Order returning the parties to the *status quo ante* which existed under the prior collective bargaining agreement pending a resolution of the underlying substantive issues.

On October 9, 1998, the District filed its Answer denying the allegations and requesting that the Charge and Request for Injunctive Relief be dismissed with prejudice and all costs be assessed against the Petitioner.

The Petitioner's request for preliminary relief results from the District's unilateral implementation of its last best offer. In support of its request for preliminary injunctive relief, Petitioner alleges:

- 1) Irreparable harm to two (2) former employees who each, as a result of the District's unilaterally imposing its last best offer, had her disability benefit reduced by approximately \$1,300 per month;
- 2) The probability that it will prevail as to the merits of the underlying substantive issues.

The Charge was bifurcated to permit a prompt ruling on both the Petitioner's request for preliminary relief and the underlying issue involving the District's unilateral implementation of its last, best contract offer. An expedited hearing was held before the Executive Director of the PERB on Monday, November 16, and Friday, November 19, 1998. Argument was presented in the form of written argument submitted on Monday, November 30, 1998.

The following is the limited ruling of the Executive Director concerning the issue of preliminary injunctive relief.

DISCUSSION

Two (2) former employees of the District are each receiving a disability benefit from the District's insurance provider, a state disability pension and Social Security. The disability provision in the contract unilaterally imposed by the District eliminated the disability payment previously paid to the employees by the District. The injunctive relief sought by the Petitioner is for the purpose of restoring the District's portion of the disability benefit and to prevent irreparable harm to other members of the bargaining unit pending a final resolution of the Charge.

A preliminary injunction constitutes extraordinary equitable relief and should only be issued in clear cases of irreparable injury and where the granting body is convinced of its urgent necessity. State v. DSEA, Del. Ch., 326 A.2d 868 (1974).

The PERB has previously set forth the standard to be applied when confronted with a request for preliminary relief. In order to prevail the party seeking the relief must establish both the irreparable harm which will occur if the request is not granted and the probability that it will prevail on the merits of the underlying substantive issue. New Castle Vo-Tech Ed. Assn. v. Bd. of Ed., Del. PERB, ULP No. 85-05-025 (1988); Christina Ed. Assn. v. Bd. of Ed., Del. PERB, ULP No. 88-09-026 (1988).

The consideration of irreparable harm requires a balancing of the harm that will be suffered by the Charging Party during the period required to process the Charge, should it prevail, against the harm which would accrue to the Respondent if the requested relief is granted and Charging Party fails to prevail on the merits. Not only the relative harm but also the length of the period between the filing of the request and a final disposition of the underlying issue are considered.

The decision of the Executive Director on the underlying allegation concerning the District's implementation of its last best offer is expected within approximately ten (10) days. For this reason, it is unnecessary to address the precise nature of either the medical condition resulting in the permanent disability of the two (2) individuals involved or the harm allegedly incurred by each. Considering the limited period of time until a decision is rendered, the harm alleged is not so immediate as to be considered irreparable should the Charging Party prevail on the merits.

If the Charging Party should prevail upon the merits and an Order returning the parties to the status quo under the prior collective bargaining agreement be issued, the intervening harm suffered during the ten (10) day period by the two (2) disabled individuals or the members of the bargaining unit collectively would be minimal, at best.

The record, having failed to establish irreparable harm, negates the need to address the probability of the Petitioner prevailing on the merits of the underlying substantive issue.

DECISION

Charging Party's request for preliminary relief by restoring the parties to the status quo as it existed under the prior collective bargaining agreement is denied.

/s/Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Delaware Public Employment Relations Bd.

Dated: 4 December 1998